

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.5050 Frivolous Returns

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.5050 Frivolous Returns

- a) *In addition to any other penalty provided by the IITA, there is imposed a penalty of \$500 upon any individual who files a purported return that does not contain information from which the substantial correctness of the stated tax liability can be determined or contains information indicating that the stated tax liability is substantially incorrect and such conduct is due to a desire to delay or impede the administration of the IITA or is due to a position that is frivolous. (IITA Section 1006)*
- b) The penalty imposed by IITA Section 1006 applies only to individual return filers. It does not apply to an individual acting as a return preparer for another taxpayer or to an individual filing or signing a return of any taxpayer other than that individual.
- c) The penalty imposed by IITA Section 1006 applies to *purported returns*. Accordingly, the penalty may be imposed even though the filing is not a processable return within the meaning of UPIA Section 3-2(d), is not filed on the form prescribed by the Department under IITA Section 1401(a), or is insufficient to avoid imposition of the penalty for failure to file a return under IITA Section 1001.
- d) A purported return *does not contain information from which the substantial correctness of the stated tax liability can be determined* if it does not contain or is not verified by a signed, written declaration that it is made under penalties of perjury, as required by IITA Section 504, and such purported return *is due to a desire to delay or impede the administration of the IITA* and is therefore subject to penalty if:
 - 1) the declaration on the form prescribed by the Department is altered or qualified in any way, or the filing is not made on the form prescribed by the Department and its verification is not identical to the verification contained in the form prescribed by the Department; or
 - 2) it indicates on its face in any manner that the filer has intentionally failed to sign the verification. For example, a statement on or attached to a form, saying that the filer has not signed the verification because signing the verification would violate his or her rights under the United States Constitution or the Constitution of the State of Illinois against self-incrimination, against unreasonable searches and seizures or to due process, or because signing the verification would constitute perjury or would violate religious principles of the filer, would cause the filing to be frivolous and subject to penalty.

- e) A purported return *contains information indicating that the stated tax liability is incorrect due to a frivolous position* if it contains an assertion that no federal or Illinois income tax liability is due because of one or more of the following positions, or because of a position substantially similar to any of the following:
- 1) an income tax is prohibited or not allowed by the United States Constitution or the Illinois Constitution;
 - 2) individuals in general are not subject to income taxation by the United States or this State;
 - 3) no provision of the Internal Revenue Code or of the IITA requires filing of a return or payment of tax by individuals having net income;
 - 4) filing of income tax returns or payment of income taxes is voluntary;
 - 5) income taxes are or may be imposed only on certain business activities or the exercise of a privilege (other than the privilege of earning or receiving income in or as a resident of Illinois), and the filer has not engaged in any such business or privileged activity;
 - 6) wages, salary and other forms of compensation for personal services are not income or otherwise are not subject to income tax;
 - 7) only government employees, nonresident aliens, citizens or residents of the District of Columbia or other federal areas, or persons other than residents or citizens of the United States are or may be made subject to an income tax imposed by the United States or this State;
 - 8) income tax may be imposed only by contractual arrangement or under a contractual or other consensual relationship between the filer and either the United States or this State;
 - 9) regulations necessary to implement the Internal Revenue Code or the IITA in general, or to implement the provisions in those statutes requiring filing of returns or payment of taxes, have not been promulgated;
 - 10) the filer has not received a specific notice of his or her obligation to maintain records, file returns or pay taxes;
 - 11) the filer has not received income from any source of income expressly identified in the Internal Revenue Code or the IITA as being from United States sources or subject to income tax;
 - 12) the filer has no income because the federal reserve notes, checks or other medium in which the filer is paid do not constitute "money", "currency" or any other taxable medium;
 - 13) the filer has no liability or no obligation to file a return because no liability has been properly assessed;

- 14) payments received in federal reserve notes or obligations of the federal government are exempt from State income taxation;
 - 15) a pure trust, contractual trust or statutory trust has no return filing or tax payment obligations; or
 - 16) any position that the United States Supreme Court or a federal circuit court of appeals has held to be frivolous for purposes of imposing a frivolous return penalty under IRC Section 6702.
- f) The penalty imposed under IITA Section 1006 shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the Illinois income tax.

(Source: Added at 28 Ill. Reg. 5694, effective March 17, 2004)